

FILED

September 16, 2003

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Division of Law - 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Attorney for the State Board of Medical Examiners

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

Administrative Action

GUPTA B. KUNA, M.D.
License No: MA 33201

FINAL ORDER
OF DISCIPLINE

TO PRACTICE MEDICINE AND SURGERY :
IN THE STATE OF NEW JERSEY

This matter was opened to the New Jersey State Board of Medical Examiners (Board) upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Respondent, Gupta B. Kuna, M.D., License No MA 33201, is a physician Licensed in the State of New Jersey and has been a licensee at all times relevant hereto. Respondent's license to practice medicine and surgery in the State of New Jersey is currently active.

2. On or about April 14, 1995, a Stipulation and Final Agency Order (First Order) executed by respondent was entered by

the Colorado State Board of Medical Examiners (Colorado Board). In the First Order, the respondent admitted and agreed that he began seeing young J.P. as a consultant in approximately October 1985. The patient had chronic and severe bronchial asthma, and although there was a well maintained medical regimen, respondent failed to perform routine and periodic pulmonary function tests. On June 26, 1990, the patient was admitted to Parkview Episcopal Hospital by respondent since the patient was suffering from severe respiratory distress. During the course of the patient's hospitalization, respondent, because of the child's fear and almost hysterical crying, did not insist that arterial blood gases be drawn during the initial period of the hospitalization. The patient expired on July 12, 1990.

3. As a result, the Colorado Board found that respondent's failure to perform periodic pulmonary function testing and not insisting that arterial blood gasses be drawn after hospitalization constituted a prima facie case of unprofessional conduct in violation of the Medical Practice Act.

4. On March 25, 1999, the Colorado Board issued another Stipulation and Final Agency Order (Second Order) wherein there was a settlement of a Formal Complaint and Amended Formal Complaint. Although respondent had been temporarily suspended on January 26, 1999 in connection with these complaints, that Order was vacated on February 19, 1999 since, upon further consideration, the panel no

longer believed that suspension was warranted. In the Second Order, respondent agreed to retire on or before June 15, 2000, at which time his license was to be deemed permanently inactive. The Second Order specifically stated that nothing in the agreement shall constitute a finding that respondent engaged in unprofessional conduct or any wrongdoing of any kind.

CONCLUSIONS OF LAW

1. The above Colorado action based on the First Order provides grounds to take disciplinary action against respondent's license to practice medicine and surgery in New Jersey because respondent made admissions therein which would give rise to discipline in New Jersey pursuant to N.J.S.A. 45:1-21(d) and (e),

DISCUSSION

Based on the foregoing findings and conclusions, a Previsional Order of Discipline suspending respondent's license to practice medicine and surgery in the State of New Jersey was entered on March 7, 2003, and a copy served on respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written

evidence supporting respondent's request for consideration and reasons thereof.

Respondent through counsel, responded to the Provisional Order of Discipline by way of a April 29, 2003 submission stating that because he was found to have committed only one act of negligence, the Board does not have the right to revoke his license. Although respondent was brought before the Colorado Board on two occasions, he claims that because the second matter was dismissed, it legally counts as one. Respondent states that although the Provisional Order of Discipline initially issues a warning, it concludes with a revocation of *his* license. Respondent believes the provision in the Provisional Order of Discipline which requires respondent's appearance before the Board is tantamount to a revocation. Respondent provided correspondence from the New York Office of Professional Medical Conduct (New York Board), which states that New York did not pursue any action in connection with the Colorado incidents. Respondent believes the New York Board's inaction should be a guideline for the New Jersey Board. Further, respondent wishes to enter into a Consent Order almost identical to the Provisional Order of Discipline, providing it calls for a warning without the requirement of appearing before the Board prior to active practice in New Jersey.

Respondent's submissions were reviewed by the Board, and the Board determined that further proceedings were not necessary and that no material discrepancies had been raised. In making its determination, the Board noted the decision in In re Nolan A-1189-

99t2, where the Appellate Court of this State found that the New Jersey Board of Veterinarians would not be bound by the penalty imposed by its New York counterpart. Id. at 2. Therefore, the Board does not need to mirror the New York Board's decision. In addition, respondent states that even though the Provisional Order of Discipline initially issues a warning, it concludes with a revocation of his license. In response, the Board approved finalizing the Provisional Order of Discipline with an amendment to eliminate the words "should his license be reinstated" which appeared at the end of paragraph #2 on page 3 of the Provisional Order of Discipline. Further, the Board rejected the claim that an appearance before the Board prior to respondent resuming practice in New Jersey is tantamount to a revocation. In addition, the Board was not persuaded that the submitted materials merited further consideration, as respondent did not dispute the Findings of Fact or Conclusions of Law.

ACCORDINGLY, IT IS on this 16th day of September, 2003, ORDERED that:

1. Respondent be and hereby is issued a warning.
2. Prior to resuming active practice in New Jersey, respondent shall be required to appear before the Board (or a committee thereof) to demonstrate fitness to practice, and any practice in this state prior to said appearance shall constitute

grounds for the charge of unlicensed practice. In addition, the Board reserves the right to place restrictions on respondent's practice.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS



By :

David Wallace, M.D.
Board President

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS
STATE OF COLORADO

JAN 27 1999

STATE OF COLORADO

Case No. ME 99-__

FORMAL COMPLAINT OF THE ATTORNEY GENERAL, NOTICE TO SET
INFORMAL PREHEARING CONFERENCE, NOTICE OF HEARING, NOTICE OF
DUTY TO ANSWER AND STATEMENT WITH REGARD TO ALTERNATIVE
DISPUTE RESOLUTION

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE
TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF GUPTA B. KUNA, M.D.,
LICENSE NO. 21004,

Respondent.

FORMAL COMPLAINT

COMES NOW the Colorado State Board of Medical Examiners ("Board"), Inquiry Panel B ("Panel"), by the Colorado Attorney General, **and makes** this formal complaint against Gupta B. Kuna, M.D. ("Respondent"), pursuant to § 12-36-118(5), **C.R.S. :**

Jurisdiction and Disciplinary History

1. The Board and the Panel **possess** jurisdiction over Respondent **and** the subject matter of these proceedings as set forth in the Colorado Medical Practice Act, §§ 12-36-101 to 137, C.R.S., and the State Administrative Procedure Act, §§ 24-4-101 to 108, C.R.S.
2. Respondent was licensed to practice medicine in Colorado on July 12, 1977 and was issued license number 21004.
3. On or about April 14, 1995, Respondent entered into a stipulation and final agency order whereby he received a letter of admonition for his care and the subsequent death of a pediatric patient.
4. Respondent is a pediatrician.

Unprofessional Conduct

Patient M.B., d.o.b. 10/15/92

5. Respondent treated patient M.B. from on or about 2/19/93 to 2/21/93
6. Patient M.B. died on 2/22/93

7. Respondent failed to properly **evaluate, ma t**, order diagnostic tests, **obtain** consultations and to provide for follow-up **care** for patient M.B. from on or about 2/19/93 to 2/21/93.

8 Respondent created a **false chart** note for patient M.B. for the dates 2/20/93 and 2/21/93.

Patient T.R., d.o.b. 12/18/96

9. Respondent treated **patient T.R.**, from on or about September **1997** to on or about February **1993**.

10. T.R. died from meningitis on or about 2/25/98.

11. **During** this period. Respondent's antibiotic **management** for patient T.R. **failed to** meet generally accepted **standards** of medical practice.

12. **On** or about 2/22/98, Respondent examined patient T.R.

13. **At that** visit, Respondent failed to appreciate the severity of T.R.'s illness and to take appropriate action.

14. **At that visit**, Respondent failed to recommend that T.R. *be taken* to the emergency room.

15. Respondent **was** consulted by the emergency room physician **upon** T.R.'s admission to the **hospital** on or about 2/23/98.

16. Respondent **again** failed to appreciate the **severity** of T.R.'s illness during **this** consultation and to take **appropriate** action, .

17. Respondent later **made a** chart note **falsely** indicating that on 2/22/98 he had recommended to T.R.'s mother to **take** T.R. to *the* emergency mom.

Patient N.S., d.o.b. 6/2/97

18. On or about 7/25/97, "Kathy" **an** employee of Respondent, called in a prescription for Zantac liquid for patient N.S.

19. "Kathy" indicated that the daily dosage should be twelve milliliters.

20. Twelve milliliters is **an** excessive amount. Twelve milligrams is an appropriate dosage.

21. When N.S.'s mother returned to Respondent's office on or about 7/25/97, Respondent learned of the error.

22. Irrespective of who made the error, Respondent failed to disclose to N.S.'s mother that N.S. had received an overdose of medication.

23. Respondent **failed** to give **appropriate** instructions to N.S.'s mother regarding the overdose.

24. Respondent **made a** false chart **note for patient N.S.'s 7/28/97** visit indicating that he **had** advised N.S.'s mother of the potential **risks of** the overdose.

Patient B.S., d.o.b. 4/8/79

25. Respondent treated patient B.S. from on or **about 5/4/83** to 11/30/88.

26. Respondent failed to properly treat **this** patient's speech delay.

27. Respondent failed to properly document **his** treatment of this patient's **speech** delay.

Patient M.S., d.o.b. 3/21/81

28. Respondent treated patient M.S. from on or **about 4/22/83** to 2/17/94.

29. During this period, Respondent failed to properly document the results of laboratory tests and failed to document **follow up** for speech and behavioral problems. Respondent **also failed to maintain a** growth chart.

Patient C.T., d.o.b. 11/24/84

30. Respondent treated patient C.T. on or about **9/4/85**.

31. The chart note for **this** visit contains the indications, "possible anemia" and "**possible VSD.**"

32. In that chart note, Respondent failed to document proper follow-up for these conditions.

Patient D.V., d.o.b. 5/14/82

33. Respondent treated patient D.V. from or about 1/14/83 to 7/17/92.
34. During this time period, Respondent failed to properly treat this patient's seizure disorder.
35. During this time period, Respondent failed to properly document his treatment of this patient's seizure disorder.

Count I

8. The conduct set forth in paragraphs 7, 11, 13-14, 16, 22-23, 26 and 34 above establish that Respondent **has** engaged in unprofessional conduct as defined in §12-36-117(1)(p), C.R.S.: an act or omission which fails to meet generally accepted standards of medical practice.

Count II

9. The conduct set forth in paragraphs 8, 17, 24, 27, 29, 32 and 35 above establishes that Respondent **has** engaged in unprofessional conduct as defined in § 12-36-117(1)(cc), C.R.S.: falsifying or repeatedly **making** incorrect essential entries or repeatedly **failing** to **make** essential entries or patient records.

WHEREFORE *the* Panel respectfully **requests** that **appropriate disciplinary** action, as provided by **law**, be imposed.

NOTICE *TO* SET INFORMAL PREHEARING CONFERENCE

YOU ARE HEREBY NOTIFIED that the attorney for Inquiry Panel B of the Colorado State Board of Medical Examiners **will appear on Friday, February 5, 1999 at 9:00 a.m. in the Office** of the Division of Administrative Hearings, 1120 Lincoln Street, Suite 1400, Denver, Colorado 80203 for the purpose of obtaining a date for **an informal prehearing conference in** conformance with Division **of Administrative Hearings Rule 21 B.** In the event **you wish to** obtain **an earlier** date to **set** the informal **prehearing** conference, **please contact** the undersigned. **You are invited to appear** in person or by **counsel.** If you cannot be present **personally** or through **counsel**, you may contact the setting clerk at the Division of **Administrative Hearings (303) 894-2500** on the aforementioned date and time to **participate** in the setting,

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that pursuant to § 12-36-115, C.R.S., and § 24-4-105, C.R.S., a hearing on the Formal Complaint of *the Attorney General* **will be held** before an

administrative law judge. on a date to be set, for the purpose of determining whether you engaged in unprofessional conduct as set forth in § 12-36-117(1)(p) and (cc), C.R.S. of the Colorado Medical Practice Act, and whether your license to practice medicine in Colorado should be revoked, suspended, or otherwise disciplined, pursuant to § 12-36-118(5), C.R.S. of the Colorado Medical Practice Act

At the hearing, you shall have the right to appear in person with legal counsel, to cross-examine any witness, to rebut any evidence presented by the complainant, and to present evidence in your own defense.

The Panel's statement with regard to an option to engage in mediation is attached for your review and signature.

NOTICE OF DUTY TO ANSWER

YOU ARE HEREBY NOTIFIED that, pursuant to § 24-4-105(2)(b), C.R.S. you are required to file a written answer to the Formal Complaint with the Division of Administrative Hearings, 1120 Lincoln Street, Suite 1400, Denver, Colorado 80203, within 30 days after the service or mailing of this Formal Complaint of the Attorney General, Notice to Set Informal Prehearing Conference, Notice of Hearing, Notice of Duty to Answer and Statement With Regard to Alternative Dispute Resolution. You must also mail a copy of such answer to the Panel's attorney, Matthew E. Norwood, First Assistant Attorney General, Office of the Attorney General, 1525 Sherman St., 5th Floor, Denver, Colorado 80203.

If you fail to file your written answer within the applicable time period, an order entering a default decision may be issued against you for the relief requested in the Formal Complaint of the Attorney General, without further notice, or such other penalties which may be provided for by law without further notice.

Date: 1/27/99



MATTHEW E. NORWOOD, 15181
first Assistant Attorney General
Business and Licensing Section

Attorneys for Colorado State Board of Medical
Examiners
Inquiry Panel B

1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 566-5287
FAX: (303) 866-5395
*Counsel of Record

AG FILE P:\R\RLNORWME\RLMN0216.DOC

BOARD OF MEDICAL EXAMINERS
JAN 27 1999
STATE OF COLORADO

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS
STATE OF COLORADO

Case No. ME 99-

ORDER OF SUMMARY SUSPENSION

**IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE
LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF
GUPTA B. KUNA, M.D., LICENSE NO. 21004,**

Respondent.

TO: Gupta B. Kuna, M.D.
1304 North Grand Street
Pueblo, Colorado 81003

ORDER OF SUMMARY SUSPENSION

THIS MATTER having come before Inquiry Panel B ("Panel") of the Colorado State Board of Medical Examiners ("Board"), the Panel does find and order with respect to the license to practice medicine in the state of Colorado of Gupta B. Kuna, M.D. ("Respondent"), that his license to practice medicine be summarily suspended pursuant to § 24-4-104(4), C.R.S. As grounds wherefore the Panel has reasonable cause to believe and finds:

1. That the allegations set forth in the Formal Complaint filed herewith and incorporated in this Order, show that the Respondent is guilty of deliberate and willful violation of the Medical Practice Act.

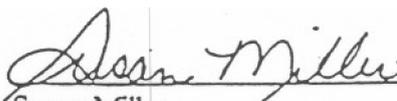
2. That the allegations set forth in the Formal Complaint filed herewith and incorporated in this Order, show that the public health, safety and welfare imperatively require emergency action

3. WHEREFORE, IT IS HEREBY ORDERED that Respondent's license to practice medicine is summarily suspended pending proceedings to determine whether Respondent's license should be further disciplined in accordance with § 12-36-118, C.R.S. of the Colorado Medical Practice Act.

4. IT IS FURTHER ORDERED that Gupta B. Kuna, M.D. cease, desist, and refrain from practicing medicine in the state of Colorado effective January 31, 1999.

DATED this 26th day of Jan, 1999.

FOR INQUIRY PANEL B
COLORADO STATE BOARD
OF MEDICAL EXAMINERS



Susan Miller
Program Administrator

STATE OF COLORADO

OPTION TO ENGAGE IN ALTERNATIVE DISPUTE RESOLUTION (MEDIATION)

CASE NAME: In the matter of the disciplinary proceeding regarding the license to practice medicine in the state of Colorado of Gupta B. Kuna, M.D., license no. 21004.

This agency disciplinary proceeding will be scheduled for hearing before an Administrative Law Judge of the Division of Administrative Hearings ("the Division"). The Division encourages parties to use alternative methods of dispute resolution and offers to the agency and the applicant the opportunity to engage in mediation.

Mediation is a process in which a neutral third party meets with the parties to assist the parties in reaching a negotiated settlement of the disciplinary proceeding. If the parties are able to reach an agreement in this way, they will control the outcome of this disciplinary case by agreeing to a solution, rather than having a solution imposed upon them by an Administrative Law Judge after a hearing.

In mediation, the mediator facilitates communication between the parties in a private, confidential and informal meeting. If the applicant has an attorney, the attorney will participate. The mediator has no decision-making authority; no settlement or solution to the disciplinary case will be achieved unless both parties are in agreement. A mediator can often help the parties generate creative options to resolve the disciplinary case, even though those options would not be available if the case proceeded to a hearing before an Administrative Law Judge. Mediators may be able to assist the parties in reaching a settlement, even where the parties' prior, unassisted negotiations have failed to result in an agreement.

If both parties agree to mediate this disciplinary case, they may notify the Division of Administrative Hearings, which will assign an Administrative Law Judge to conduct the mediation.

All of the Administrative Law Judges in the Division are trained as mediators and are available to the parties for this purpose. An Administrative Law Judge who serves as a mediator acts in a completely confidential manner and has no contact with the judge to whom the case is assigned for hearing.

The parties should indicate whether they wish to engage in mediation by completing the information on the reverse side of this form. The respondent should return the completed form to the Division of Administrative Hearings, along with the answer to the Notice of Charges or Formal Complaint.

PLEASE COMPLETE NEXT PAGE

AGENCY'S ELECTION TO MEDIATE
(CHECK THE APPROPRIATE LINE)

_____ The agency in the disciplinary proceeding described on the front of this form believes that mediation of this dispute is appropriate and elects to engage in mediation before an Administrative Law Judge of the Division of Administrative Hearings.

X The agency in the disciplinary proceeding described on the front of this form chooses nor. to engage in mediation at this time.



(Signature of Agency Official or
Assistant Attorney General)



Date

RESPONDENT'S ELECTION TO MEDIATE
(CHECK THE APPROPRIATE LINE)

_____ The respondent in the disciplinary proceeding described on the front of this form believes that mediation of this dispute is appropriate and elects to engage in mediation before an Administrative Law Judge of the Division of Administrative Hearings.

_____ The respondent named below chooses nor to engage in mediation at this time.

Name of Respondent (Print or Type)

(Signature of Respondent or
Respondent's Attorney)

Date

THE RESPONDENT MUST RETURN THIS FORM TO THE DMSION OF ADMINISTRATIVE HEARINGS, ALONG WITH THE ANSWER TO THE NOTICE OF CHARGES OR FORMAL COMPLAINT, EVEN IF THE RESPONDENT HAS NOT CHOSEN TO ENGAGE IN MEDIATION. THE ADDRESS OF THE DMSION OF ADMINISTRATIVE HEARINGS IS 1120 LINCOLN STREET, SUITE 1400, DENVER, CO 80203. A COPY OF THIS FORM AND THE ANSWER OF THE RESPONDENT SHOULD ALSO BE SENT TO THE ATTORNEY GENERAL.

CERTIFICATE OF SERVICE

This ~~is~~ to certify that I have duly **served** the within ORDER OF SUMMARY SUSPENSION; FORMAL COMPLAINT OF THE ATTORNEY GENERAL, NOTICE **TO SET** INFORMAL PREHEARING CONFERENCE ,NOTICE OF HEARING, NOTICE OF DUTY TO ANSWER AND STATEMENT WITH REGARD TO ALTERNATIVE DISPUTE RESOLUTION; MOTION FOR ORDER PROTECTING PATIENT IDENTITIES; and KEY TO PATIENT IDENTITIES upon all parties herein by depositing copies of same in the **United States mail, First Class, postage prepaid**, at Denver, Colorado, this 27th day of January 1999, addressed as follows:

Gupta B. Kuna, M.D.
1304 North Grand Street
Pueblo, CO 81003

Gary Blum, Esq.
Long & Jaudon, P.C.
1600 Ogden Street
Denver, CO 80218



BEFORE THE STATE BOARD OF MEDICAL EXAMINERS
STATE OF COLORADO

RECEIVED

FEB 11 1999

Div. of Admin. Hearings

Case No. ME 99-I

AMENDED FORMAL COMPLAINT OF THE ATTORNEY GENERAL AND NOTICE
OF DUTY TO ANSWER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE
TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF GUPTA B. KUNA, M.D.,
LICENSE NO. 21004,

Respondent.

FORMAL COMPLAINT

COMES NOW the Colorado State Board of Medical Examiners ("Board"), Inquiry Panel B ("Panel"), by the Colorado Attorney General, and makes this formal complaint against Gupta B. Kuna, M.D. ("Respondent"), pursuant to § 12-36-118(5), C.R.S.:

Jurisdiction and Disciplinary History

1. The Board and the Panel possess jurisdiction over Respondent and the subject matter of these proceedings as set forth in the Colorado Medical Practice Act, §§ 12-36-101 to 137, C.R.S., and the State Administrative Procedure Act, §§ 24-4-101 to 108, C.R.S.
2. Respondent was licensed to practice medicine in Colorado on July 12, 1977 and was issued license number 21004.
3. On or about April 14, 1995, Respondent entered into a stipulation and final agency order whereby he received a letter of admonition for his care and the subsequent death of a pediatric patient.
4. Respondent is a pediatrician.

Unprofessional Conduct

Patient M.B., d.o.b. 10/15/92

5. Respondent treated patient M.B. from on or about 2/19/93 to 2/21/93
6. Patient M.B. died on 2/22/93.

7. Respondent failed to properly evaluate, treat, order **diagnostic tests**, obtain consultations and to provide for follow-up care for patient M.B. from on or about 2/19/93 to 2/21/93.

8. Respondent created a fake chart note for patient M.B. for the dates 2/20/93 and 2/21/93.

Patient T.R., d.o.b. 12/18/96

9. Respondent treated patient T.R., from on or about September 1997 to on or about February 1998,

10. T.R. died from meningitis on or about 2/25/98.

11. During this period, Respondent's antibiotic management for patient T.R. failed to meet generally accepted standards of medical practice.

12. On or about 2/22/98, Respondent examined patient T.R.

13. At that visit, Respondent failed to appreciate the severity of T.R.'s illness and to take appropriate action.

14. At that visit, Respondent failed to recommend that T.R. be taken to the emergency room.

15. Respondent was consulted by the emergency room physician upon T.R.'s admission to the hospital on or about 2/23/98.

16. Respondent again failed to appreciate the severity of T.R.'s illness during this consultation and to take appropriate action.

17. Respondent later made a chart note falsely indicating that on 2/22/98 he had recommended to T.R.'s mother to take T.R. to the emergency room.

Patient N.S., d.o.b. 6/2/97

18. On or about 7/25/97, "Kathy" an employee of Respondent, called in a prescription for Zantac liquid for patient N.S.

19. "Kathy" indicated that the daily dosage should be twelve milliliters.

20. Twelve milliliters is an **excessive** amount. **Twelve milligrams** is an appropriate dosage.

20 A. Respondent wrote his ordered this medication in a manner that could lead to this error.

21. When N.S.'s mother returned to Respondent's office on or about 7/28/97, Respondent learned of the error.

22. Irrespective of who made the error, Respondent failed to take appropriate action regarding the overdose.

23. Respondent failed to give appropriate instructions to N.S.'s mother regarding the overdose.

24. Respondent made a false chart note for patient N.S.'s 7/28/97 visit indicating that he had advised N.S.'s mother of the potential risks of the overdose.

Patient B.S., d.o.b. 4/8/79

25. Respondent treated patient B.S. from an or about 5/4/83 to 11/30/88.

26. Respondent failed to properly treat this patient's speech delay.

27. Respondent failed to properly document his treatment of this patient's speech delay.

Patient M.S., d.o.b. 3/21/81

28. Respondent treated patient M.S. from on or about 4/22/83 to 2/17/94.

29. During this period, Respondent failed to properly document the results of laboratory tests and failed to document follow up for speech and behavioral problems., Respondent also failed to maintain a growth chart.

Patient C.T., d.o.b. 11/24/84

30. Respondent treated patient C.T. on or about 9/4/85

31. The chart note for this visit contains the indications, "possible anemia" and "possible VSD."

32. In that chart note, Respondent failed to document proper follow-up for these conditions.

Patient D.V., d.o.b. 5/14/82

33. Respondent treated patient D.V. from on or about 1/14/83 to 7/1 7192,

34. During this time period, Respondent failed to properly treat this patient's seizure disorder.

35. During this time period, Respondent failed to properly document his treatment of this patient's seizure disorder.

Count I

36. The conduct set forth in paragraphs 7, 11, 13-14, 16, 20A., 22-23, 26 and 34 above establish that Respondent has engaged in unprofessional conduct as defined in §12-36-117(1)(p), C.R.S.: **an act or omission which fails to meet generally accepted standards of medical practice.**

Count II

37. The conduct set forth in paragraphs 8, 17, 24, 27, 29, 32 and 35 above establishes that Respondent has engaged in unprofessional conduct as defined in §12-36-117(1)(cc), C.R.S.: **falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records.**

WHEREFORE the Panel respectfully requests that **appropriate** disciplinary action, as provided by law, be imposed.

NOTICE OF DUTY TO ANSWER

YOU ARE HEREBY NOTIFIED that, pursuant to § 24-4-105(2)(b), C.R.S., you are required to file a written answer to the Formal Complaint with the Division of Administrative Hearings, 1120 Lincoln Street, Suite 1400, Denver, Colorado 80203, within 30 days, or as otherwise provided for by order of the ALJ, after the service or mailing of this Amended Formal Complaint of the Attorney General. You must also mail a copy of such answer to the Panel's attorney, Matthew E. Norwood, First Assistant Attorney General, Office of the Attorney General, 1525 Sherman St., 5th Floor, Denver, Colorado 80203.

If you fail to file your written answer within the applicable time period, an order entering a default decision may be issued against you for the relief requested in the Formal

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

Case No. ME 99-1

ORDER

**IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE
LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF
GUPTA B. KUNA, M.D., LICENSE NO. 21004,**

Respondent.

TO: Gupta B. Kuna, M.D.
1304 North Grand Street
Pueblo, Colorado 81003

Gary Blum, Esq.
Long & Jaudon, P.C.
1600 Ogden Street
Denver, Colorado 80218-1414

ORDER

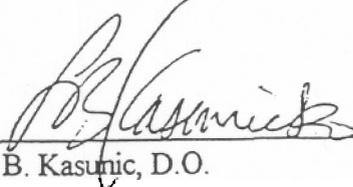
THIS MATTER **having** come before Inquiry Panel B ("Panel") of the Colorado State Board of Medical Examiners ("Board"), the Panel does find and order with respect to the order of summary suspension dated January 26, 1999 in the above captioned matter that it has considered new information **provided** by the Respondent **and** others that **was** heretofore **unavailable**. Upon consideration of this **new information**, the Panel **finds that it** no longer believes that a suspension of Respondent's license pursuant to § 24-4-104(4), C.R.S. **is** warranted.

Nothing in **this** Order shall constitute a withdrawal of the charges in the Amended Formal Complaint currently before *the* Board.

WHEREFORE, IT IS HEREBY ORDERED that Respondent's suspension pursuant to § 24-4-104(4), C.R.S. is hereby vacated, effective February 18, 1999.

DATED this 19th day of February, 1999.

FOR INQUIRY PANEL B
COLORADO STATE BOARD
OF MEDICAL EXAMINERS

A handwritten signature in cursive script, appearing to read "L. Kasunic", is written over a horizontal line.

Louis B. Kasunic, D.O.
Panel Chair

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE
LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO
OF GUPTA KUNA, M.D., LICENSE NO. 21004

IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel B ("Panel") of the Colorado State Board of Medical Examiners ("Board") and Gupta Kuna ("Respondent") as follows:

1. Respondent was licensed to practice medicine in Colorado on July 12, 1977, and was issued license No. 21004 which Respondent has held continuously since that date.

2. The Panel and the Board have jurisdiction over Respondent and over the subject matter of this proceeding.

3. Respondent admits and agrees as follows:

(a) Dr. Kuna first began seeing young J. P. as a consultant in approximately October of 1985. Although this was a most difficult case of chronic and severe bronchial asthma, the patient was well maintained on a medical regimen, however, during this time Dr. Kuna failed to perform routine and periodic pulmonary function tests. On or about June 26, 1990, patient J.P. was admitted to Parkview Episcopal Hospital by Respondent, as the patient was suffering from severe respiratory distress. During the course of the patient's hospitalization, Dr. Kuna because of the child's fear and almost hysterical crying did not insist that arterial blood gases be drawn during the initial period of the hospitalization. Patient J.P. expired on July 12, 1990.

(b) That the conduct set forth in paragraph 3(a) above, specifically not performing periodic pulmonary function testing and not insisting that arterial blood gases be drawn shortly after hospitalization constitute a prima facie case of unprofessional conduct in violation of the Medical Practice Act.

EXHIBIT A

BEFORE THE STATE BOARD OF MEDICAL EXAMINERS

STATE OF COLORADO

STIPULATION AND FINAL AGENCY ORDER

IN THE MATTER OF THE DISCIPLINARY PROCEEDING REGARDING THE LICENSE TO PRACTICE MEDICINE IN THE STATE OF COLORADO OF GUPTA B. KUNA, M.D., LICENSE NO. 21004,

Respondent.

IT IS HEREBY STIPULATED and agreed by and between Inquiry Panel B ("Panel") of the Colorado State Board of Medical Examiners ("Board") and Gupta B. Kuna, M.D. ("Respondent") as follows:

JURISDICTION AND CASE HISTORY

1. Respondent was licensed to practice medicine in the state of Colorado on July 12, 1977, and was issued license no. 21004 which Respondent has held continuously since that date
2. The Panel and the Board have jurisdiction over Respondent and over the subject matter of this proceeding.
3. On January 27, 1999, the Panel filed a Formal Complaint pursuant to § 12-36-118(5), C.R.S. against Respondent. On February 11, 1999, the Panel amended the Formal Complaint.
4. During the pendency of the case filed by the Panel, Respondent has received strong letters of support from the medical, nursing and patient communities. These letters are contained in the Board's file and may be obtained through Respondent's attorney.
5. It is the intent of the parties and the purpose of this Stipulation and Final Agency Order ("Order") to provide for a settlement of all matters alleged in the Formal Complaint and the Amended Formal Complaint as well as all other complaints against Respondent currently before the Board at the time of the effective date of this Order without the necessity of holding a formal disciplinary hearing. This Order constitutes the entire agreement between the parties, there are no other agreements or promises, written or oral, which modify, interpret, construe or affect this Order
6. Respondent understands that:
 2. Respondent has the right to be represented by an attorney of the

EXHIBIT B